

REMARKS

Applicants wish to thank the Examiner and the Examiner's supervisor for the courtesies extended to applicants' representatives during the in-person interview on October 23, 2007, during which time the Examiner and Applicants' representatives discussed the features of the claims in light of the outstanding Office action and the applied references. Applicants have amended independent claims 8-10, 13, 20, and 31 in the manner discussed with the Examiner. Support for the amendments to claims 8-10, 13, 20, and 31 can be found, for example, at page 14, lines 8-14, page 17, lines 16-25, page 21, lines 6-12, and Fig. 4. Applicants submit that the foregoing amendments place the application into condition for allowance.

Claims 1-33 are pending, with claims 1, 6-13, 20, and 31-33 being independent. Applicants acknowledge that claims 2-5, 15, 22, and 25 are considered allowed by the Examiner. Applicants respectfully submit that all pending claims are in condition for allowance for at least the following reasons.

Claim Rejections Under 35 U.S.C. 102/103

The Examiner has rejected claims 9-10, 13-14, 16-17, 20-21, 26-27, and 31 as anticipated by U.S. Patent No. 5,433,739 to Sluitjer ("Sluitjer"), and claim 8 as obvious over Sluitjer.

Independent claims 8, 9, 10, 13, and 20, as amended, each recite advancing at least a portion of the distal region of a catheter having an electrode (claims 8 and 9) or an electrode provided at a distal region of the catheter (claims 10, 13, and 20) beyond a center of the nucleus pulposus to a location that is closer to the inner wall of the annulus fibrosus than to the center of the nucleus pulposus. As discussed with the Examiner during the interview, Sluitjer fails to disclose or suggest the claimed advancement beyond a center of the nucleus pulposus to a location that is closer to the inner wall of the annulus fibrosus than to the center of the nucleus pulposus. In contrast, Sluitjer places the electrode at approximately the center of the disc so that the average center of lesioning occurs at the center of the disc. See, e.g., col. 5, lines 58-64; col. 12, line 64 to col. 13, line 6; FIG. 6. For at least these reasons, Applicants respectfully submit that claims 8-10, 13-14, 16-17, 20-21, and 26-27 are patentable over Sluitjer.

Independent claim 31 recites "introducing an intervertebral disc apparatus within an intervertebral disc such that a functional element incorporated into the apparatus adjacent a distal end of the apparatus is positioned proximate a wall of the intervertebral disc." The term "proximate" is defined by Merriam-Webster's Dictionary as "very near" or "immediately preceding." Merriam Webster Dictionary (on-line ed. at <http://www.merriam-webster.com/dictionary/proximate>, 2007). As discussed above with respect to the rejection of claims 8-10, 13-14, 16-17, 20-21, and 26-27, Applicants respectfully submit that Sluitjer fails to disclose positioning a functional element proximate, or very near, a wall of the intervertebral disc. For at least this reason, Applicants respectfully request reconsideration and withdrawal of the rejection of claim 31.

Double Patenting

The Examiner provisionally rejected claims 1, 6-10, 13, 14, 16, 17, 20, 21, 23, 24, 26, 27, 30, and 31 on the ground of nonstatutory obviousness-type double patenting over claims 1-28 of co-pending Application No. 10/712,063. Applicants note for the Examiner that Application No. 10/712,063 issued as U.S. Patent No. 7,267,683 on September 11, 2007, two days before the date of the pending Office action. Applicants request that these rejections be withdrawn in view of the terminal disclaimer filed herewith.

Applicants do not acquiesce in the Examiner's characterizations of the art. For brevity and to advance prosecution, applicants may not have addressed all characterizations of the art and reserve the right to do so in further prosecution of this or a subsequent application. The absence of an explicit response by Applicants to any of the Examiner's positions does not constitute a concession to the Examiner's positions. The fact that Applicants' comments have focused on particular arguments does not constitute a concession that there are not other arguments for patentability of the claims. Applicants submit that all of the dependent claims are patentable for at least the reasons given with respect to the claims on which they depend.

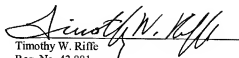
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Serial No. : 10/712,006
Filed : November 14, 2003
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Attorney's Docket No.: 22416-014006 / 25-31-0099

Please apply any charges or credits to deposit account 06-1050.

Respectfully submitted,

Date: 12/13/2007


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